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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,343	03/24/2004	Steven Burnett	08350.9194-02000	3491
58982 7590 07/31/2008 CATERPILLAR/FINNEGAN, HENDERSON, L.L.P. 901 New York Avenue, NW WASHINGTON, DC 20001-4413				
EXAMINER				
FOX, CHARLES A				
ART UNIT		PAPER NUMBER		
3652				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/807,343

Applicant(s)

BURNETT ET AL.

Examiner

Charles A. Fox

Art Unit

3652

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15 and 19-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15 and 19-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 15 and 19-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification is silent on a sensor that detects the speeds of the various stages of the cylinder. Rather on page 16 the sensors are given as limit switches that determine the end stroke of the stages and adjust fluid to the cylinders accordingly. As such lines 7-9 of claim 15 should be deleted as they encompass new matter. The reference to "the sensor" in line 10 is acceptable, but should be amended to read a sensor. In the art rejections below the sensor is treated as being the limit switches as disclosed on page 16 and again on page 24 of the specification. Appropriate corrections are required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15,19-22 and 25-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Liberman et al. Regarding claims 15 and 29 Liberman et al. US 4,112,823 discloses a control system for a cylinder based ejector system for a vehicle comprising:

- a power source;

- said power source for moving a cylinder attached to an ejection plate;

- wherein said cylinder will move at different speeds at different extension lengths when fluid is provided at a constant pressure;

- a speed control operative connected to the cylinder and automatically varying the fluid input to the cylinder such that all stages of the cylinder operate at the same speed;

- wherein the speed control automatically changes the fluid input bases upon the position of the cylinder during the extension stroke as determined by a sensor.

Regarding claim 19 Liberman et al. also disclose a valve in communication with the cylinder for adjusting a flow of fluid to said cylinder.

Regarding claims 20 and 21 Liberman further disclose the device as having sensors that detect the full extension of each stage of the cylinder and a valve for adjusting the fluid flow to the cylinder in response to a signal from the sensor.

Regarding claim 22 Liberman et al. also disclose a sensor in the cylinder for detecting when fluid pressure in the cylinder exceeds a predetermined value.

Regarding claim 25 Liberman et al. also disclose a pump as providing the fluid to said cylinder.

Regarding claims 26-28 Liberman also discloses a valve disposed between the fluid source and the cylinder, wherein the valve has a movable spool for regulating the fluid flow via a variable movable resistive control device.

Regarding claims 30 and 31 Liberman discloses a valve for regulating the fluid flow to the cylinder, wherein said cylinder acts as a motor to move the ejector plate.

Regarding claims 32 and 33 Liberman further disclose the device as having sensors that detect the full extension of each stage of the cylinder and a valve for adjusting the fluid flow to the cylinder in response to a signal from the sensor.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liberman et al. as applied to claim 22 above, and further in view of Henneberry. Liberman teaches the limitations of claim 22 as above, they further teach relieving the pressure from the cylinder if it reaches a predetermined limit, thereby stopping movement of the blade. They do not teach returning the ejector blade to the start position in response to an overpressure signal. Henneberry US 4,522,551 teaches a hydraulic control for an ejection plate with an overpressure sensor, wherein when said sensor is tripped the ejector plate is moved to its original position. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device

taught by Liberman et al. with controls as taught by Henneberry in order to protect the hydraulic system from damage by immediately relieving a strain on the system when detected.

Response to Amendment

The amendments to the claims filed on April 24, 2008 have been entered into the record. The amendment to claim 15 introduces new matter to the application which must be deleted as outlined above.

Response to Arguments

Applicant's arguments filed April 24, 2008 have been fully considered but they are not persuasive. The amendments to claim 15 do show subject matter which distinguishes over the Liberman reference. However this subject matter is new to the application and not supported by the specification and must be deleted. As such Liberman still meets the limitations of claim 15 which is made final. Regarding claim 29 the arguments are not persuasive, when reading the instant specification and the claims in light of it is clear the instant invention operates in the same manner as the Liberman reference for very similar reasons (constant speed of a multistage cylinder). As such the pending claims in the application are finally rejected.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 571-272-6923. The examiner can normally be reached on 7:00-4:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on 571-272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles A. Fox/
Primary Examiner, Art Unit 3652